

ESTTA Tracking number: **ESTTA307589**Filing date: **09/22/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Las Vegas Convention and Visitors Authority		
Entity	State Agency	Citizenship	Nevada
Address	3150 Paradise Road Las Vegas, NV 89109 UNITED STATES		

Attorney information	Jason D. Firth Brownstein Hyatt Farber Schreck LLP 100 City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, jfirth@bhfs.com, knyquist@bhfs.com, jobermeyer@bhfs.com, Phone:7023822101
----------------------	---

Applicant Information

Application No	77138601	Publication date	09/08/2009
Opposition Filing Date	09/22/2009	Opposition Period Ends	10/08/2009
Applicant	Michael DeAngelis 89 Arthur Avenue Staten Island, NY 10305 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Short-sleeved or long-sleeved t-shirts

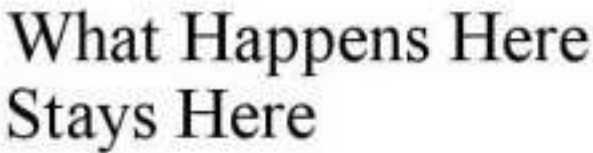
Grounds for Opposition

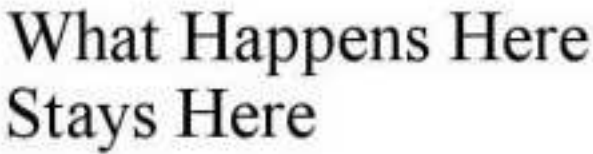
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3526119	Application Date	03/22/2004
Registration Date	11/04/2008	Foreign Priority Date	NONE
Word Mark	WHAT HAPPENS HERE STAYS HERE		

Design Mark	WHAT HAPPENS HERE STAYS HERE
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 Advertising, public relations

U.S. Registration No.	3613861	Application Date	04/07/2005
Registration Date	04/28/2009	Foreign Priority Date	NONE
Word Mark	WHAT HAPPENS HERE STAYS HERE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/02/23 First Use In Commerce: 2009/02/23 Gaming Machines		

U.S. Registration No.	3624680	Application Date	04/07/2005
Registration Date	05/19/2009	Foreign Priority Date	NONE
Word Mark	WHAT HAPPENS HERE STAYS HERE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2008/12/01 First Use In Commerce: 2008/12/01 Gaming Tables		

U.S. Registration No.	3668099	Application Date	12/06/2006
Registration Date	08/18/2009	Foreign Priority Date	NONE
Word Mark	WHAT HAPPENS HERE, STAYS HERE.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 Promoting the Las Vegas, Nevada area as a destination for leisure and business travelers		

Attachments	76582191#TMSN.gif (1 page)(bytes) 78604224#TMSN.jpeg (1 page)(bytes) 78604239#TMSN.jpeg (1 page)(bytes) 77058510#TMSN.jpeg (1 page)(bytes) Notice of Opposition; Appl 77138601.pdf (7 pages)(286330 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jason D. Firth/
Name	Jason D. Firth
Date	09/22/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of the Trademark Application Serial No. 77/138,601
For Trademark: WHAT HAPPENS IN VEGAS NEVER HAPPENED
Published in the Official Gazette on September 8, 2009

Las Vegas Convention and
Visitors Authority,
Opposer,

v.

Michael DeAngelis,
Applicant.

OPPOSITION NO. _____

NOTICE OF OPPOSITION

Las Vegas Convention and Visitors Authority ("LVCVA"), a Nevada government agency having its principal place of business at 3150 Paradise Road, Las Vegas, Nevada 89109, believes it will be damaged by the registration of U.S. Trademark Application Serial No. 77/138,601 for the mark WHAT HAPPENS IN VEGAS NEVER HAPPENED. in International Class 25 for "short-sleeved or long-sleeved t-shirts," filed by Michael DeAngelis on March 23, 2007 and published for opposition in the Official Gazette on September 8, 2009. As grounds for the opposition, LVCVA alleges the following:

A. LVCVA and its Trademarks

1. LVCVA owns the trademark WHAT HAPPENS HERE, STAYS HERE. ("WHHSH Mark"). LVCVA began using the WHHSH Mark in commerce nationwide in December 2002 in conjunction with, among other things, the promotion of Las Vegas as a travel destination.

2. Since its first appearance on television in 2002, the WHHSH Mark and its connection to Las Vegas tourism has become widely known throughout the country.

3. Because of LVCVA's aggressive marketing campaign incorporating the WHHSH Mark, the WHHSH Mark has grown in national consumer recognition since 2002, especially via television commercials. By the end of 2004, commercials that included the WHHSH Mark had been aired 9,750 times on U.S. network and cable television stations. The advertisements ran during prime time on U.S. networks before a total of approximately 1,045,010,000 views by viewers. On the 21 national channels of cable television, the ads reached a total of about 1,978,220,000 views by viewers. In addition, the ads were broadcast on local network and cable affiliates in major markets nationwide including Chicago, New York, Dallas, Houston, Los Angeles, San Diego, San Francisco, and others.

4. LVCVA has also run full-page print ads, which used the WHHSH Mark prominently in nationally distributed magazines such as *People*, *Entertainment Weekly*, *Sports Illustrated*, *Vanity Fair*, *Elle*, *MAXIM*, and *Golf Magazine*. An estimated total of about 153,907,000 people viewed these advertisements.

5. As of December 2007, LVCVA had spent over \$135 million in connection with the marketing of the WHHSH Mark, which has become indelibly linked to Las Vegas tourism. Television and print advertising continues today.

6. Because of LVCVA's significant investment in the WHHSH Mark, as well as the widespread success of the marketing campaign focusing on the WHHSH Mark, the WHHSH Mark has acquired fame, distinctiveness and tremendous goodwill in the United States.

7. On March 22, 2004, LVCVA's predecessor in interest filed an application with the USPTO for the WHHSH Mark in International Class 35 for "advertising and public relations" (U.S. Serial No. 76/582,191). That application, and the entire interest in and goodwill associated with the WHHSH Mark, was assigned to LVCVA on November 15, 2006. A registration issued to LVCVA on November 4, 2008.

8. On April 7, 2005, LVCVA's predecessor in interest filed an application with the USPTO for the WHHSH Mark in International Class 9 for "gaming machines" (U.S. Serial No. 78/604,224). That application, and the entire interest in and goodwill associated the WHHSH Mark, was assigned to LVCVA on March 11, 2008. A registration issued to LVCVA on April 28, 2009.

9. On April 15, 2005, LVCVA's predecessor in interest filed an application with the USPTO for the WHHSH Mark in International Class 28 for "gaming tables" (U.S. Serial No. 78/604,239). That application, and the entire interest in and goodwill associated with the WHHSH Mark, was assigned to LVCVA on February 22, 2008. A registration issued to LVCVA on May 19, 2009.

10. On December 6, 2006, LVCVA filed an application for the WHHSH Mark with the U.S. Patent and Trademark Office ("USPTO") in International Class 35 for use in connection with "promoting the Las Vegas, Nevada area as a destination for leisure and business travelers" (U.S. Serial No. 77/058,510). A registration issued to LVCVA on August 18, 2009.

B. Michael DeAngelis and his Trademark

11. Michael DeAngelis ("DeAngelis"), an individual residing at 89 Arthur Avenue, Staten Island, NY 10305, seeks to register the trademark WHAT HAPPENS IN

VEGAS NEVER HAPPENED (the "Never Happened Mark") (U.S. Serial No. 77/138,601) for " short-sleeved or long-sleeved t-shirts " in International Class 25.

12. Upon information and belief, DeAngelis is deliberately seeking to profit from the goodwill and popularity of LVCVA's WHHSH Mark.

13. DeAngelis filed the opposed intent-to-use federal trademark application for the Never Happened Mark on March 23, 2007, well after LVCVA's rights in the WHHSH Mark first arose in 2002.

14. DeAngelis' application for the Never Happened Mark published for opposition on September 8, 2009.

C. LVCVA's Claim for Trademark Infringement

15. The goods for which DeAngelis seeks registration of the Never Happened Mark are competitive, complementary, and/or related to the goods and services offered by LVCVA under its WHHSH Marks.

16. The goods described in the opposed application for the Never Happened Mark and LVCVA's goods and services are marketed and sold in the same or similar channels of trade, and are purchased by the same or similar general classes of customers.

17. DeAngelis' Never Happened Mark is similar to LVCVA's WHHSH Marks.

18. In light of the fact that LVCVA is the senior user; that DeAngelis' Never Happened Mark is similar to LVCVA's WHHSH Marks; that the goods in connection with which DeAngelis seeks to register the Never Happened Mark are competitive, complementary and/or related to LVCVA's goods and services; and that the channels of trade and customer base for LVCVA's goods and services and DeAngelis' goods

appear to be the same or overlapping, DeAngelis' Never Happened Mark is likely to cause confusion, or to cause mistake, or to deceive consumers.

19. In view of the similarities between DeAngelis' Never Happened Mark and LVCVA's WHHSH Marks, and the similarity of the uses thereof, DeAngelis' proposed mark consists of and comprises matter which falsely suggests a connection with LVCVA and therefore damages LVCVA.

D. LVCVA's Claim for Trademark Dilution

20. LVCVA's WHHSH Mark is famous. As a result of the extensive use in interstate commerce of the WHHSH Mark in the United States and throughout the world, the public has come to associate goods and services bearing the WHHSH Mark with LVCVA alone.

21. Without LVCVA's consent, and after the WHHSH Mark became famous, DeAngelis plans to deliberately and willfully use in interstate commerce the Never Happened Mark in connection with the identification and advertising of its business and the sale, and/or offering for sale and/or distribution of goods and services.

22. DeAngelis' use of the Never Happened Mark in association with goods over which LVCVA has no control will cause the WHHSH Mark to suffer negative associations and the undermining of the WHHSH Mark's capacity to identify and distinguish LVCVA's services.

23. DeAngelis willfully intends to trade on LVCVA's reputation and/or to cause dilution of the WHHSH Mark. As a result, DeAngelis' Never Happened Mark also wrongfully dilutes and harms LVCVA's WHHSH Mark.

E. Conclusion

24. Because LVCVA's trademark rights are prior and senior to DeAngelis' rights in his mark, and a likelihood of confusion exists between these marks, and because DeAngelis' Never Happened Mark will dilute the WHHSH Mark, the application to register DeAngelis' Never Happened Mark should be denied.

WHEREFORE, LVCVA prays that DeAngelis' USPTO application (U.S. Serial No. 77/138,601) for the mark WHAT HAPPENS IN VEGAS NEVER HAPPENED. be rejected, that no registration be issued thereon to DeAngelis, and that this opposition be sustained in favor of LVCVA.

Respectfully submitted,

Dated: September 22, 2009


By: /Jason D. Firth/
Jason D. Firth
Kelley L. Nyquist
Brownstein Hyatt Farber Schreck, LLP
100 City Parkway
Suite 1600
Las Vegas, Nevada 89106-4614

Attorneys for Opposer
Las Vegas Convention and Visitors
Authority

Certificate of Service

I, Julie Obermeyer, hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Michael DeAngelis via first class mail on September 22, 2009 to:

Michael DeAngelis
89 Arthur Avenue
Staten Island, NY 10305


Julie Obermeyer, Paralegal
Brownstein Hyatt Farber Schreck, LLP
100 City Parkway, Ste 1600
Las Vegas, Nevada 89106